necessarily follow the other. In fact, in light of the regulatory background of this issue, it is clear that such a link cannot be shown. In order to understand why that is so, it is necessary to recap the relevant parts of that history.

The BOCs' arguments as to the alleged costs of structural separation are based on the same myth that animates their previous presentations on this topic. In the BOC myth, structural integration has led to a vast expansion of information services by all providers: BOCs, other incumbent local exchange carriers (ILECs) and independent ISPs. Under that scenario, the vigorous BOC participation in the information services market made possible by structural integration has spurred other providers to improve service and reduce rates. Other providers, who are allowed to offer all of their services on a joint basis, not only have not been injured by BOC unseparated information services, but they also even have been strengthened by the BOCs' more vigorous competition, according to the BOCs.

The BOC discussions of this point all reflect the post hoc ergo propter hoc fallacy. The growth of non-BOC information services in recent years has nothing to do with the BOCs' offering of unseparated information services. Such growth was occurring when the BOCs were subject to structural separation and would have continued irrespective of how the BOCs' information services were organized. As the BOCs once again concede, they have not become significant factors in most information service

markets or in information services overall,[41] so it is impossible to ascribe significant public benefits to their participation or to the manner in which they have offered information services.

The prime example of the BOCs' supposed contributions to the information services market remains the voice messaging experience. As was the case in their 1995 comments and in the Computer III Remand proceeding, voice messaging continues to be the BOCs' only significant information service, with the possible exception of Internet access, and they overwhelmingly dominate the "mass market" residential segment of the network-based voice messaging market.[42]

One of the reasons that the BOCs misapply the voice messaging experience is that they misunderstand the regulatory history upon which they try to build their case. In their comments and the studies submitted therewith, the BOCs once again recount the story of the Custom Calling Order[43] without realizing its true lessons. In the BOCs' retelling, the Commission refused in that case to allow the unseparated provision of Custom Calling voice messaging service by the pre-divestiture AT&T, assuming

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[41] See, e.g., SBC Comments at 5-8.

[42] See Booz Allen & Hamilton Inc., The Benefits of RBOC Participation in the Enhanced Services Market at III-4 through III-6 (April 4, 1995), attached to US West Comments (graph on III-6 shows ILECs and BOCs account for over 85% of residential market).

[43] American Telephone & Telegraph Company Petition for Waiver, 88 FCC 2d 1, 26, 31 (1981) (emphasis added).

that if AT&T chose not to provide voice messaging under structural separation, others would. Other providers did not come along, leaving the "low end" residential market unserved. Since the BOCs started providing unseparated voice messaging services, the residential voice messaging market has increased tremendously. The BOCs' conclusion is that the structural separation requirement deprived the public of voice messaging service. The Hausman/Tardiff Report also purports to show that the delay in introducing voice messaging service, resulting from the structural separation requirement, imposed a consumer welfare loss of nearly $6 billion.[44] Bell Atlantic attaches a recent article by Hausman to the same effect.[45]

As MCI explained in its initial comments, however, such an interpretation is only possible by deliberately ignoring the most important aspects of the Custom Calling Order. The Commission only assumed in that case that structural separation "does not necessarily foreclose the availability of similar services to consumers," because other providers would come along "if the local telephone companies provide the requisite interconnection facilities" needed by those other providers.[46] The Commission

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[44] Hausman/Tardiff Report at 14-15. The Hatfield Reply, at 12-15, also rebuts this aspect of the Hausman/Tardiff Report.

[45] J.A. Hausman, Valuing the Effect of Regulation on New Services in Telecommunications, Brookings Papers: Microeconomics 1997.

[46] 88 FCC 2d at 26, 31 (emphasis added).

also recognized subsequently in the Computer III Notice of Proposed Rulemaking that "[h]ad comparably efficient interconnection been available [to other providers], others might be providing such services today."[47] Thus, the relative dearth of mass market voice messaging services in the mid-1980's was not necessarily the result of structural separation but, rather, the BOCs' failure to provide nondiscriminatory access to reasonably priced network features needed by competitors to provide information services.

In fact, as was vividly demonstrated by the MemoryCall case and other evidence submitted in MCI's and other parties' 1995 comments, independent voice messaging providers have not been provided such nondiscriminatory, reasonably priced access. The statement of a voice messaging provider attached to the Hatfield Reply illustrates the problems faced by such providers.[48] The recent round of initial comments demonstrates that these problems continue. For example, the Association of Teleservices International, Inc. (ATSI) points out that a LEC refused to provide abbreviated call forwarding activation, a necessary telecommunications component of voice messaging services, to a member of ATSI. The member's request was refused in spite of the finding of the relevant industry technical standards forum that

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[47] Amendment of Section 64.702 of the Commission's Rules and Regulations, CC Docket No. 85-229, Phase I, 50 Fed. Reg. 33581, 33582 n.8 (Aug. 20, 1985).

[48] See Attachment to Exhibit A hereto.

abbreviated call forwarding is technically feasible.[49]

There is therefore no logical basis to conclude that structural separation was the cause of the relative dearth of mass market voice messaging services in the mid-1980's. Rather, the cause, as suggested in the Custom Calling Order and the Computer III NPRM, was the BOCs' failure to provide reasonably priced, nondiscriminatory access to voice messaging providers, a problem that continues.

Thus, the BOCs' unseparated provision of voice messaging services over the past decade cannot be said to have brought about the benefit of satisfying a previously unserved market. Rather, the BOCs' discrimination against other ISPs has kept voice messaging more of a BOC preserve than other information service markets, and the BOCs happen to be serving it on an unseparated basis. The BOCs' dominance of the residential voice messaging market thus is not an example of the benefits of unseparated BOC information services, but, rather, a stark illustration of the dangers of discriminatory access that are exacerbated by the BOCs' joint provision of services.

The BOCs also argue that their low penetration rates in information services other than mass market voice messaging demonstrate that their participation in the information services market on an unseparated bases presents no risk of

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[49] ATSI Comments at 34.

anticompetitive conduct.[50] The pattern of BOC penetration, however, demonstrates just the reverse -- namely, that the BOCs have not accomplished much in the information services market other than in mass market voice messaging, where there have been the most BOC abuses, and in that market, they retain their dominance.

There is a similar pattern, although resulting in a less dramatic success for the BOCs, in Internet access services, which the BOCs proffer as their other notable success story in information services. There, too, however, success has come not so much from a superior product winning the competitive battle, but, rather, from the BOCs' withholding of network elements needed for the provision of Internet access and other information services involving xDSL technology.[51] Thus, the BOCs' successes in information services demonstrate not public benefits from unseparated BOC provision of information services so much as the effect of the BOCs' exploitation of their control of the network.

Accordingly, continuation of the structural separation requirement would not lead to foregone benefits, as the BOCs argue. In those areas where they remain insignificant factors, structural integration has clearly made no difference, and in mass market voice messaging and Internet access and other broadband packet-switched data services, the way to generate

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[50] See, e.g., SBC Comments at 5-8.

[51] ITAA Comments at 13 & n. 24.

significant public benefits is to require the BOCs to do what they should have done all along, starting with the Custom Calling Order, namely, provide reasonably priced unbundled network access on a nondiscriminatory basis. The elimination of structural separation thus drops out as a causative public benefits factor in any information services market.[52]

As discussed above, SBC repeats its argument that only the BOCs are forced to provide information services through a separate subsidiary, while all of their competitors are permitted to provide a variety of services on an integrated basis. In fact, the reality is the opposite. The rest of the information services industry is entirely separated from the BOCs' network operations. If mere intracorporate separation is a handicap, as SBC suggests, ISPs are far more handicapped by complete separation from the BOCs' networks. That the rest of the industry, other than mass market voice mail, has thrived despite its complete separation from the BOCs' local networks is the most vivid illustration of the lack of public need for, and lack of public benefits from, joint BOC telecommunications and information services.

SBC is especially off the mark with regard to voice messaging providers, since most of those providers are "pure

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[52] As MCI explained in its initial comments, at 31-32 & n. 52, the Commission has previously recognized that in order to make a rational causative link between "a" and "b," it must be shown that only "a" leads to "b;" there is no cause and effect relationship if "non-a" would also lead to "b."

play" small non-carrier firms.[53] SBC is also incorrect in asserting that no entity has voluntarily chosen corporate "`separateness'" for the provision of information services.[54] MCI pointed out in its initial comments that some BOCs have chosen to provide certain information services through partially separated subsidiaries,[55] and Ameritech indicates that it may be offering its packet-switched based information services through a separate affiliate.[56] All of these examples cast doubt on the BOCs' assertions that the separated provision of information services is infeasible.

Accordingly, the BOCs have failed to demonstrate any significant costs or other burdens, either for themselves or consumers, resulting from structural separation.

II. RECENT BOC ABUSES AND THE INCOMPLETE PROTECTION OFFERED BY SECTION 251 AND ONA UNDERSCORE THE CONTINUING RISKS TO RATEPAYERS AND COMPETITION PRESENTED BY THE ELIMINATION OF STRUCTURAL SEPARATION

Along with their claims of public benefits resulting from the elimination of structural separation, the BOCs also deny that such relief will threaten competition or telecommunications ratepayers. Such denials fly in the face of the extensive record

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53 Commercial Internet Exchange Ass'n. Comments at 10.

54 SBC Comments at 18.

55 MCI Comments at 30.

56 Ameritech Comments at 14 n.47.

of abuses revealed in the initial round of comments. The BOCs also claim that the development of local competition and the availability of unbundled network elements (UNEs) pursuant to Section 251 have made it virtually impossible to discriminate in the provision of access to ISPs or to cross-subsidize. In fact, as explained in MCI's and others' initial comments, the BOCs' dominance over access to the local network is virtually undiminished, and CLECs are not yet able to obtain the UNEs needed for a full range of competitive information services.

A. BOC Abuses Have Continued

The initial comments reveal a continuing pattern of anticompetitive conduct by the BOCs. They have been denying reciprocal compensation on local calls from their own subscribers to ISPs served by CLECs, thereby subjecting calls to such ISPs to discriminatorily high costs and making it more difficult for CLECs to offer local service to ISPs providing Internet access and other information services.[57] America Online lists a wide variety of BOC anticompetitive violations over the past few years.[58] Moreover, the Statement of Michael Rabb, attached to the Hatfield Reply (Exhibit A hereto), describes the type of discriminatory behavior faced by small voice messaging service

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[57] ALTS Comments at 16-19; Commercial Internet Exchange Ass'n. Comments at 11; Time Warner Comments at 5-6.

[58] America Online Comments at 11 n. 27.

providers, particularly the charging of a higher total amount for the BOC network components used by ISPs than the BOCs charge for their own comparable information services. The BOCs also engage in low-level guerilla warfare, such as refusing to take down a circuit that has been cancelled by an ISP and continuing to bill for it.[59]

The ISPs also discuss the BOCs' refusals to make available various network elements needed for the provision of competitive xDSL-based information services.[60] Although MCI agrees with those commenters who take the position that the ILECs' Section 251 unbundling obligations should not be extended to cover ISPs, it is clear that ONA and Section 251, in conjunction with local competition generally, are not yet working effectively enough to provide ISPs, either directly or indirectly, what they need to compete with the BOCs. It is the practical impact of the current marketplace dynamics on the ISPs that must govern any analysis of the risks of eliminating structural separation.

Moreover, to the extent that the BOCs seek to rely on Section 251 as a basis for eliminating structural separation, MCI and other parties pointed out in the initial comments the difficulties CLECs have faced and continue to face in securing nondiscriminatory unbundled network elements (UNEs) from the BOCs

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[59] Community Internet Systems Comments at 2.

[60] See, e.g., Western Regional Networks et al. Comments at 2; ITAA Comments at 13; Community Internet Systems Comments at 2.

and other ILECs. In addition to BOC denials of reciprocal compensation for traffic between their subscribers and ISPs served by CLECs, BOCs have also been denying collocation under Section 251(c)(3) to CLECs, especially when the latter seek to provide competing broadband data services, such as xDSL.[61] As MCI pointed out in its initial comments, CLECs cannot provide ISPs what they need to compete with the BOCs' information services if the appropriate UNEs and services are not available to the CLECs in the first place.

> Until CLECs can compete using open access as envisioned by the 1996 Act, it is premature for the Commission to speculate that CLEC offerings will act as a competitive substitute for ILEC access services.[62]

Moreover, no BOC has yet been able to meet the Section 271 checklist, which underscores their unwillingness to open up the local loop to competition. No ILEC has yet developed Operational Support Systems (OSS) that fully comply with the Commission's Rules, even though OSS are critical and indispensable for the ordering, provisioning, maintenance and repair and billing of UNEs.[63] The ILECs have also largely refused to offer UNEs in the combined manner in which many prospective CLECs seek to purchase them.

Finally, as LCI points out, the Eighth Circuit's decision

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[61] Commercial Internet Exchange Ass'n. Comments at 11.

[62] Id.

[63] LCI Comments at 7 (citing BellSouth Louisiana 271 Order).

striking down key rules implementing Section 251 is the final nail in the coffin of any reliance that otherwise might have been placed on that provision as a basis for concluding that the risks of access discrimination have been sufficiently minimized to justify eliminating structural separation.[64] It is difficult to understand how the BOCs can expect to be taken seriously in basing their arguments on Section 251, having brought a judicial challenge striking down a crucial aspect of the Commission's rules implementing that provision.

These instances of BOC abuse and obstructionism must be given great weight in the Commission's assessment of the costs and benefits of eliminating structural separation. It must be assumed, moreover, that these examples are only illustrative of the total problem, since the BOCs are extremely imaginative in coming up with new ways to hinder competition once the Commission takes action to remedy previous problems. That these problems are different from the types of anticompetitive conduct reflected in the record in the Computer III Remand Proceeding simply shows the dynamic nature of the information service industry, not that the situation is any better or the BOCs any less likely to discriminate. That anticompetitive conduct keeps happening demonstrates that the Commission's nonstructural regulations cannot be expected to make a significant impact on BOC behavior and therefore must be discounted in any rational cost-benefit

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[64] Id. at 7-8.

analysis.

B. Neither ONA Nor the 1996 Act Has Led to Significant Unbundling or Other Competitive Developments Benefitting ISPs

The BOCs argue that, in light of the 1996 Act, local competition has arrived, at least in metropolitan areas, rendering all regulation of the local network obsolete.[65] They point to the hundreds of interconnection agreements they have signed with CLECs and argue that, with such a "multitude of viable alternative[]" sources of local services, effective discrimination against ISPs is virtually impossible.[66] They conclude that this cornucopia of service alternatives satisfies the Ninth Circuit's concerns that the lack of fundamental ONA unbundling leaves ISPs at the mercy of the monopoly BOCs.[67]

In fact, however, the 1996 Act only "establish[ed] the framework and conditions for local competition," as BellSouth concedes in a moment of candor.[68] The abuses and problems with the provision of UNEs under Section 251 detailed in MCI's and other parties' initial comments, discussed above, vividly demonstrate how much remains to be accomplished before there is

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[65] See, e.g., Bell Atlantic Comments at 2-3, 7-8, 14-15; Ameritech Comments at 3-5, 12-14 (CEI/ONA should be eliminated along with LATA restrictions and Section 272).

[66] See, e.g., SBC Comments at 11-16.

[67] See, e.g., SBC Comments at 15-16.

[68] BellSouth Comments at 24.

significant local competition or even sufficient competitive pressures on the BOCs and other ILECs to provide the network services and elements needed for the provision of competitive information services. Local competition has only just begun to develop, with the BOCs still in control of 99% of the local traffic after all of the regulatory and entrepreneurial developments in the industry during the past decade.

The seemingly unbreakable hold the BOCs have on the local service market rebuts the BOCs' arguments for another reason as well. As CompuServe and the General Services Administration point out, the BOCs' control over the local and intraLATA service markets is much greater than their control over the interLATA market.[69] Yet Congress determined that the BOCs, through their local bottleneck control, were still such a threat to interLATA competition that it mandated separate affiliates for in-region interLATA telecommunications and interLATA information services in Section 272. A fortiori, the same local bottleneck control certainly requires similar separation for local and intraLATA information services, for all of the same reasons. Although it is technically true that the Commission does not have to follow, with regard to intraLATA services, Congress' lead as to interLATA services, the BOCs still have to explain either why Congress was wrong about interLATA services or why the less competitive local and intraLATA service markets require less stringent safeguards.

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[69] CompuServe Comments at 10; GSA Comments at 4.

As MCI pointed out in its initial comments, that interconnection agreements have been signed does not signify that the ILECs are carrying out their Section 251 obligations. The CLECs have little or no bargaining power in the negotiation of such agreements, and the Eighth Circuit has taken away the Commission's authority to set the rates for UNEs. As also mentioned above, the BOCs are also undermining the unbundling requirements of Section 251 through inadequate OSS for the ordering, provisioning, maintenance and repair and billing of UNEs. As a result, the pro-competitive goals of Section 251 have been derailed by the BOCs.[70]

MCI and other parties also explain that Section 251 could not substitute for fundamental ONA unbundling even if the BOCs' obstructionism ceased. ONA unbundling focuses on switched services that have to be made available to ISPs, whereas Section 251 focuses more on the physical elements of the network. Since ONA is still as moribund and unused as ever -- not even the BOCs bother to defend it anymore -- the concerns expressed in California III as to the vulnerability of ISPs to BOC discrimination still have not been addressed. Attached as Exhibit B is the Declaration of Peter P. Guggina, which responds to the comments submitted by the Alliance for Telecommunications Industry Solutions (ATIS) on behalf of the Network Interconnection Interoperability Forum (NIIF), the industry forum

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[70] MCI Comments at 54-57 and Appendix B.

designated to address ONA unbundling issues.

As Mr. Guggina explains, ATIS conceded in its comments that the NIIF process is non-binding, requiring ISPs to negotiate the terms of new ONA services with each ILEC, even after the NIIF reaches a consensus on the technical feasibility of the service. The ineffectiveness of the NIIF in securing industry-wide solutions for technical standards issues raised by ONA service requests has driven most ISPs to abandon the NIIF process. In their initial comments, the BOCs cynically point to the ISPs' absence from NIIF activities as proof that the ISPs are getting what they need from the ILECs, which, of course, is the opposite of the reality. It is not surprising, given this sorry record, that a number of parties concur with Mr. Guggina's conclusion that only direct Commission intervention in the ONA development process, including the establishment of deadlines for fundamental unbundling, will ever yield any results.[71]

Given the absence of any suggestion in the Further Notice or in any of the comments that ONA has developed since it was held inadequate in California III, none of the "lesser included" CEI and other Computer III safeguards discussed in the Further Notice could possibly provide sufficient protection against anticompetitive conduct, even in tandem with ONA. All of the abuses detailed in the initial round of comments happened when CEI and the other safeguards -- network information disclosure

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[71] See, e.g., America Online Comments at 16-18.

and nondiscrimination and ONA reporting -- were fully operative. Not even the BOCs try to make a case for reliance on ONA, CEI and the other nonstructural safeguards as a basis for eliminating structural separation. Rather, the BOCs want to get rid of most or all of those nonstructural safeguards altogether, as well as structural separation, based entirely on "the changed circumstances occasioned by the passage of the 1996 Act," as BellSouth puts it.[72] Thus, ONA, CEI and the other Computer III nonstructural safeguards can be completely ignored in the Commission's analysis of whether to retain structural separation.

The evidence of abuses and BOC obstructionism in the initial comments constitutes a powerful demonstration of the inadequacy of the current state of local competition and unbundling to protect ISPs from discrimination and ensure their access to the necessary BOC-controlled inputs to competitive information services. Whether, in a given instance, the failing is in ONA or in an ILEC's refusal to provide UNEs to CLECs under Section 251, the ISPs are clearly not getting what they need, based on their complaints about the BOCs' use of network services and elements for their own information services that are not being made available to ISPs. It may be that, technically, an ISP would not be able to obtain a particular network element that it needed directly from an ILEC under Section 251. Nevertheless, in a freely competitive market, in which CLECs could obtain a full

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[72] BellSouth Comments at 24.

complement of UNEs, ISPs' needs would be met. Since the ISPs do not have the network access they need to compete effectively with the BOCs' information services across the board, structural separation must be maintained.[73] None of the rationales for lifting it can be sustained with ONA so moribund and Section 251 unbundling so incomplete.

C. Other Competitive Developments Cited by the BOCs Do Not Justify the Elimination of Structural Separation

The BOCs cite various other factors as supporting the elimination of structural separation, such as the vigorous competition in the information services industry and the Expanded Interconnection proceeding. As various parties point out, however, these factors are even less persuasive than ONA and Section 251. Thriving competition in the information services industry, for example, hardly signifies the existence of thriving local competition or any reason that ILECs can no longer discriminate.[74] Indeed, the more intense the competition in information services, the more vulnerable ISPs will be to the BOCs' leveraging of their remaining local market dominance, which has hardly eroded at all in the past few years, notwithstanding the tremendous changes throughout the rest of the telecommunications industry. As ITAA points out, the large size

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[73] See ALTS Comments at 12.

[74] See Ad Hoc Comments at 3.

of some ISPs makes little difference in assessing the relative leverage that can be brought to bear by a customer in a highly competitive industry and a monopoly supplier.[75]

Moreover, the unbundling that has been required in the Expanded Interconnection proceeding and vigorous information service competition were both in existence when California III was decided. Since those factors, in tandem with ONA, were not sufficient to support an affirmance of the Commission's decision to eliminate structural separation in that case, the Commission has no basis for relying on them now.[76]

In short, nothing has happened since California III -- the 1996 Act, incipient local competition, the BOCs' interconnection agreements with CLECs and the increasingly competitive information services industry -- to fill the gap left by the failure of ONA. Given the absence of any significant relevant public costs from the continuation of structural separation, as shown in Part I, the lack of any effective alternative safeguards -- including the current state of local competition and unbundling -- requires that the Commission retain structural separation for BOC local and intraLATA information services.

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[75] ITAA Comments at 12 n. 22.

[76] See Time Warner Comments at 7-8.

III. THE COMMISSION SHOULD UNDERTAKE THE ADDITIONAL UNBUNDLING INDICATED IN MCI'S INITIAL COMMENTS AS WELL AS FURTHER STEPS TO COMBAT BOC DISCRIMINATION

The initial round of comments confirms the need for the Commission to undertake the ONA and Section 251 unbundling outlined in MCI's initial comments. The BOC abuses detailed in the record illustrate the compelling need for aggressive Commission action in this area. If the Commission does undertake such steps, the resulting availability of network services and elements may make it possible in the future to eliminate structural separation in reliance on such unbundling. Such reliance at the current embryonic stage of unbundling, however, would be as unjustifiable as reliance on ONA turned out to be in California III.

MCI wishes to take this opportunity to clarify an aspect of the Section 251-type unbundling that it proposed in its initial comments related to the BOCs' broadband packet-switched information services. In describing the access that CLECs need to unbundled elements on page 69 of its initial comments, MCI may not have made it sufficiently clear that CLECs require access to the ILECs' end offices and, where Subscriber Line Carrier (SLC) systems are deployed, to SLC cabinets, as well as at the customer premises in order to provide competitive leased or unbundled xDSL services. As MCI and other parties explained in their comments on the BOC Section 706 petitions, without nondiscriminatory access to the ILECs' local loops and equipment, including sub-

loop elements, services like xDSL cannot be provided in competition with the ILECs, including the provision of the services that ISPs need to create offerings competing with the BOCs' information services.[77]

As indicated in its initial comments, MCI does not believe that it would be productive to enlarge the scope of Section 251 to cover ISPs along with carriers. For the reasons stated by other commenters, such an expansion of Section 251 would be detrimental and unwieldy. As ALTS points out, if ISPs are not getting what they need in the way of unbundled elements, then ILECs are not making a full complement of UNEs available to CLECs at reasonable rates, and the Section 251 process must be improved.[78] It will not do any good, however, to try to short-circuit the process by giving ISPs direct access to UNEs without taking on all of the burdens of carriers. Accordingly, MCI opposes unbundling proposals such as those submitted by the Retail Internet Service Providers, which essentially argue that Section 251-type unbundling be made available directly to ISPs.[79]

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[77] Thus, MCI was not limiting its suggested unbundling to "that portion of the loop from the subscriber's premises to a Subscriber Loop Carrier (SLC) hub," but to each possible element, including access to the ILECs' xDSL equipment at the end office in those instances where SLC systems are not deployed.

[78] See ALTS Comments at 9-12.

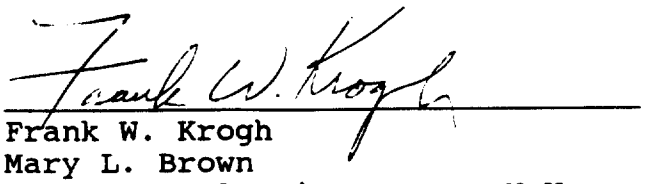
[79] See Retail ISP Comments. The Retail ISPs claim, at 2, that they are not seeking Section 251-type unbundling, but that is the effect of their request for unbundled unswitched clean copper circuits.

Once the Section 251 process is working as it should, ISPs should not have any problems securing unbundled elements for the provision of information services.

CONCLUSION

For the reasons stated herein and in MCI's initial comments, the Commission should not eliminate the structural separation requirement.

Respectfully submitted,

By: 

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Dated: April 23, 1998

EXHIBIT A

THE BENEFITS OF STRUCTURAL SEPARATION: REPLY

HATFIELD ASSOCIATES, INC

MAY 19, 1995

THE BENEFITS OF STRUCTU L SEPARATION: REPLY

Hatfield Associates, Inc. (HAI) has been a by CompuServe, ITAA, and MCI to respond to arguments raised in the Comment roun his proceeding in papers submitted by Dr. Jerry Hausman and Dr. Timothy Tardiff, Dr. David ce, and Dr. Clifford Fry, *et al.*[1] Each of these papers address the costs and benefits of struc separation. The central theme of this response to those papers is that the Commission sh concern itself with costs and benefits to consumers. Many arguments raised in the papers fo on the benefits and costs to individual competitors. The costs and benefits to the Regiona l Operating Companies (RBOCs) are relevant only to the extent they influence consumer are.

A subsidiary theme is that in most cost-benef analyses, there will be costs. The presence of costs arising from structural separation is not suffic ent to eliminate the separate subsidiary requirement. In most cases, any costs of maintaining uctural separation requirements are likely to be exceeded by the benefits. In a dynamic environment, structural safeguards that promote non-discriminatory access to the features and functions of the monopoly network will allow thousands of individual entrepreneurs an expanded ability to innovate.

Finally, the analysis must be conducted in light of known marketplace and technological developments. As papers submitted by the RBOCs show, enhanced services markets are

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[1] HAI filed a paper on behalf of these same organizations in the initial Comment round of this proceeding, Hatfield Associates, "ONA: A Promise Not Realized -- Reprise" ("Hatfield ONA Reprise"), April 6, 1995. The papers we are responding to here are Jerry Hausman and Timothy Tardiff, "Benefits and Costs of Basic and Enhanced Telecommunications Services," ("Hausman/Tardiff Report"), April 6, 1995 (submitted with Comments of six of the RBOCs); Affidavit of David J. Teece ("Teece Affidavit"), undated, (submitted with Comments of Ameritech), and Clifford Fry, James Griffin, Donald House and Thomas Saving, "The Economics of Structural Separation from the Perspective of Economic Efficiency," ("Fry, *et al*"), April 4, 1995 (submitted with Comments of US West).